

BEFORE THE
DEPARTMENT OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH CASE NO. 2005120675

JOSIAH W.,

Claimant,

vs.

INLAND REGIONAL CENTER

Service Agency.

DECISION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, heard this matter on March 27, 2006, in San Bernardino, California.

Claimant's father, Victor W., represented claimant, who was not present at the fair hearing.

Vince Toms, Consumer Services representative, Appeals Unit, Inland Regional Center, represented the Inland Regional Center (the IRC or Service Agency).

The matter was submitted on April 11, 2006.¹

¹ Pursuant to an agreement between the parties and a time waiver by claimant, and because the recording device to be used at the hearing did not appear to be functioning properly, the matter was left open at the conclusion of the hearing to permit the administrative law judge to draft a proposed stipulation of facts in this matter. The stipulation of facts was approved by the parties on April 11, 2006, when the matter was deemed submitted.

ISSUE

Should the Service Agency, under the particular circumstances of this case, authorize its vendor to compensate claimant's preferred care provider for the 18 hours of services rendered before she became CPR and First Aid certified?

FACTUAL FINDINGS

1. Claimant was born on June 3, 1999. Claimant has a "developmental disability" and was and is eligible for "services and supports for persons with developmental disabilities" under Welfare and Institutions Code section 4712.² Such services and supports are provided through the Inland Regional Center (IRC), the family's service agency.

2. At all times material herein, claimant was authorized to receive 48 monthly hours of respite care services. Such authorization is reflected in claimant's Individual Program Plan (IPP).³

3. Until late 2004 or early 2005 (the precise date varying from family to family), respite care services were provided to families of developmentally disabled persons through a "parental voucher" system. Under this system, parents selected, hired and compensated the respite care providers directly. As employers, the parents were responsible for all documentation, recordkeeping, and other procedures incident to their employer status.

4. Between late 2004 and early 2005, the parental voucher system was gradually discontinued and a "respite agency" system was implemented in its place. Under the new system, parents had to choose a respite care agency (or "vendor") through which services would be provided. Parents had two options in this regard. First, they could simply have the agency send out one of its own respite care employees. Second, they could themselves select an individual, a "preferred care provider." In the latter case, the selected individual would submit an employment application to the respite agency, which would in turn hire and compensate the individual in question. This second option was a mechanism by which parents could, if they wished, retain as their respite care provider the same individual whom they had employed under the parental voucher system. However, it became the respite care agency, not the claimant's parents, who acted as the employer and was thus responsible for carrying out all responsibilities incident to that status. The respite care agency was also responsible to determine that any individual it hired, including a preferred care provider, met all regulatory requirements applicable to respite care workers.

5. When, in early 2005, claimant was transitioned from the parental voucher system to the respite agency system, claimant's parents chose Inland Respite, Inc. (IR) as claimant's respite care agency. Claimant's parents chose Jessica Li, the respite care provider

² All statutory references in this Decision are to the Welfare and Institutions Code, unless otherwise noted.

³ The second sentence of Factual Finding paragraph 2 is based on claimant's most recent IPP, which was received in evidence at the hearing.

who had cared for claimant under the discontinued parental voucher system, to be the family's preferred care provider under the new system. Li began service as the family's preferred care provider in April 2005. She continued her service until September 2005, when she returned to her university studies.

6. On June 24, 2005, claimant's father Victor W. signed a statement acknowledging that he had received and read a copy of IR's "Respite Service Handbook (for parents/caregivers)." It is stated on page 3 that "[i]t is mandatory for Respite Workers to attend CPR and First Aide training. No Specific [sic] date has been set for such training."

7. IR sends out a form letter to individuals seeking employment with IR as preferred care providers. The form letter identifies a number of documents that the job applicant is required to submit to IR, including CPR and First Aid certificates. The form letter was modified on or about September 15, 2005. Before the modification, the final paragraph of the letter informed the applicant that "You will be able to start providing respite as soon as you have completed the employment process." As modified, the letter stated that "CPR and First Aid are provided by the agency and are free of charge. Please call to register for class." Neither claimant's parents nor Naomi McCool (see Factual Finding paragraph 8) ever received the letter as thus modified.

8. With Li's return to school approaching, claimant's parents began to look for a new preferred care provider to take Li's place. They found and selected Naomi McCool.

9. In early to mid-September, 2005, Victor W. phoned and advised IR that claimant's parents were retaining a new preferred care provider to replace Li. Victor W. asked IR what needed to be done to effectuate this change. IR staff advised Victor W. that IR would mail an employment application to him. Approximately two weeks later, the application had not yet arrived, and Victor W. phoned IR a second time. Victor W. advised IR that claimant's parents needed to get McCool, their new preferred care provider, "on board." Victor W. was again told that an application would be sent out to him. During this second call, Victor W. raised the issue of CPR certification for McCool. Victor W. was told that IR would "get back to him" with regard to scheduling McCool's training. The job application arrived in the mail several days later, by which time it was late September or early October. Victor W. gave the application materials to McCool, who took them home to fill them out. Victor W. phoned and advised IR that McCool's application would soon be submitted. Victor W. again made inquiry concerning CPR training. He was told that the next class would be offered at the end of October.

Claimant's parents did not feel they could wait until the end of October for this training to take place. Accordingly, Victor W. made arrangements on his own to secure the needed training for McCool from a source other than IR. McCool received her CPR and First Aid training and certification on October 21, 2005. She completed and signed her job application on the same date. Claimant's mother Denise H. mailed the completed application to IR on October 26. IR received it on October 31.

10. By arranging on their own for McCool's CPR training, claimant's parents had to pay for it themselves. Had McCool received such training through IR, it would have been provided at no cost to claimant's parents.⁴

11. IR's policy was to offer CPR and First Aid training on certain weekdays and twice monthly on Saturdays. IR staff was trained with regard to this policy, and with regard to scheduling additional classes pursuant to preferred provider need if the regularly-scheduled classes were filled up. The dates when this policy was in effect are unknown.

12. IR never advised claimant's parents that CPR and First Aid training was available every other Saturday or on specified weekdays.

13. On September 19, 2005, an individual program plan (IPP) conference was held with regard to claimant. Victor W. participated in the formulation of the IPP. Page 1 of the IPP stated in connection with respite care services that claimant's "parents may continue to monitor their support service needs in the home setting" and "parents may notify IRC CSC [consumer service coordinator] of any changes or concerns in these areas."

14. McCool provided 18 hours of respite care services for claimant's family in September 2005, specifically on September 18, 23, 24 and 25.⁵ McCool was not CPR and First Aid certified at the time and she did not become certified until October 21, 2005. Claimant's parents did not contact IRC in advance for approval of these respite hours and did not ask IRC to intervene with IR to speed up the certification process.

15. On or about October 31, 2005, IR Human Resources Specialist Anthony Muniz spoke by telephone with Denise H., who asked him whether McCool would be paid for the respite care she provided to the family in September. Muniz responded that IR could pay McCool for the period after she became CPR and First Aid certified. Muniz advised Denise H. to contact the family's IRC caseworker if she had any concerns in this regard. This was the first time that it had been suggested to claimant's parents that IR would not compensate McCool for her September hours.

16. On or about November 1, 2005, Victor W. phoned and advised IRC that IR was not planning to pay McCool for the 18 pre-certification hours. Victor W. requested that IRC approve payment for these hours.

17. After the communications described above in Factual Findings paragraphs 15 and 16, IRC staff had several discussions about whether McCool could be paid for her September hours. Several potential ways in which payment for the September hours could be approved were considered. IRC concluded, however, that statutory and regulatory

⁴ Earlier in the year, claimant's parents had had similar difficulties scheduling Li's CPR and First Aid training with IR. They again made arrangements for Li to get her CPR training elsewhere, and paid the cost themselves.

⁵ The specific dates of McCool's service in September are reflected in her time sheets that were received in evidence at the hearing.

authority did not permit it to authorize payment for these 18 hours. Instead, IRC believed that claimant's parents were themselves responsible to pay for them, based on principles of parental responsibility pursuant to California Code of Regulations, title 17, section 54326, subdivision (d)(1).⁶ Further basis for IRC's belief that claimant's parents were responsible for payment was that IRC was not notified of the need for McCool's services for September 2005 until on or about October 31, 2006.

18. By letter dated November 14, 2005, IRC formally advised claimant's parents that it would not authorize payment for the 18 hours of respite services performed by McCool in September 2005, because McCool was not at that time CPR certified and thus did not meet the minimum requirements for respite care providers prescribed in California Code of Regulations, title 18, section 56792, subdivisions (a) and (e)(3)(A).

19. IRC's general expectation is that in the event the parents of a claimant experience any difficulty in connection with an agency's provision of respite care services, the parents should directly contact and advise IRC of the difficulty, so that IRC may then address it in a timely and appropriate fashion. IRC believes that claimant's parents should have known to contact IRC directly concerning IR's perceived delay in scheduling CPR and First Aid training for McCool and that they should have initiated such contact before McCool began serving as the family's preferred care provider. IRC's belief in this regard is based on the statement in claimant's IPP quoted above in Factual Finding paragraph 13 that "parents may continue to monitor their support service needs in the home setting" and "parents may notify IRC CSC [consumer service coordinator] of any changes or concerns in these areas."

20. Claimant's parents were not aware that they were expected directly to contact IRC to address the difficulties they were experiencing with regard to McCool's CPR and First Aid certification. They instead believed that it was sufficient and appropriate that they contact IR to discuss and attempt to resolve this issue. IRC did not become aware of the problem until Victor W. brought the matter to its attention on November 1, 2005. IRC believes that if Victor W. had sought IRC's assistance in advance, before McCool began to serve as the family's preferred care provider, IRC could have addressed the problem. For example, IRC could have found someone to provide respite care services to the family on a temporary basis until McCool became certified. Claimants' parents were not aware that such an option existed.

21. On December 5, 2005, IR received by mail time cards for McCool for the months of September and November 2005. The following day, IR's Muniz explained to Victor W. by telephone that the September time card was not valid, since McCool had not been CPR and First Aid certified during that period.

⁶ Section 54326, subdivision (d)(1) provides that "Regional centers shall not: (1) Use purchase of service funds to purchase services for a minor child without first taking into account, when identifying the minor child's service needs, the family's responsibility for providing similar services to a minor child without disabilities. In such instances, the regional center must provide for exceptions, based on family need or hardship."

22. On or about December 10, 2005, Victor W. timely requested a fair hearing to challenge IRC's decision to decline authorization of payment for McCool's 18 September hours of respite care services.

LEGAL CONCLUSIONS

Statutory, Regulatory, and Judicial Authority

1. "The Legislature has enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act . . . to provide a 'pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life.' (§ 4501.) Such services include locating persons with developmental disabilities (§ 4641); assessing their needs (§§ 4642-4643); and, on an individual basis, selecting and providing services to meet such needs (§§ 4646-4647). The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (§§ 4501, 4509, 4685), and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community (§§ 4501, 4750-4751).

* * *

In the Lanterman Act '[the] State of California accepts a responsibility for its developmentally disabled citizens and an obligation to them which it must discharge.' (§ 4501.) In so doing, the Legislature has not only recognized that '[persons] with developmental disabilities have the same legal rights and responsibilities [as those] guaranteed all other individuals by the Federal Constitution and laws and the Constitution and laws of the State of California' (§ 4502), but has also granted them certain statutory rights, including the right to treatment and habilitation services at state expense. (See §§ 4502, 4620, 4646-4648.)

To implement this scheme of statutory rights of developmentally disabled persons and the corresponding obligations of the state toward them, the Legislature has fashioned a system in which both state agencies and private entities have functions. Broadly, DDS, a state agency, 'has jurisdiction over the execution of the laws relating to the care, custody, and treatment of developmentally disabled persons' (§ 4416), while 'regional centers,' operated by private nonprofit community agencies under contract with DDS, are charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime' (§ 4620).

* * *

The rights of developmentally disabled persons and the corresponding obligations of the state toward them under the Lanterman Act are implemented in the Individual Program Plan (IPP) procedure. Under the Act, the regional centers are required to

develop an IPP for each client. (§ 4647.) The IPP must be prepared and reviewed and, if necessary, modified at least annually, and must include the following: an assessment of the client's capabilities and problems; a statement of time-limited objectives for improving his situation; a schedule of the type and amount of services necessary to achieve these objectives; and a schedule of periodic review to insure that the services have been provided and the objectives have been reached. (§ 4646.) While it is true, as the Attorney General has observed, that the regional centers have 'wide discretion' in determining *how* to implement the IPP (62 Ops.Cal.Atty.Gen., *supra*, 229, 230; see § 4648), they have no discretion at all in determining *whether* to implement it: they must do so (§ 4648)." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 388-390.)

2. Welfare and Institutions Code section 4502 provides in part:

"Persons with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California. No otherwise qualified person by reason of having a developmental disability shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity, which receives public funds.

It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following:

(a) A right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible. Such services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports."

3. Welfare and Institutions Code section 4620, subdivision (a) provides in part:

"It is the intent of the Legislature in enacting this division that the network of regional centers for persons with developmental disabilities and their families be accessible to every family in need of regional center services. It is the further intent of the Legislature that the design and activities of regional centers reflect a strong commitment to the delivery of direct service coordination and that all other operational expenditures of regional centers are necessary to support and enhance the delivery of direct service coordination and services and supports identified in individual program plans."

4. Welfare and Institutions Code section 4640.6, subdivision (a) provides as follows:

"In approving regional center contracts, the department shall ensure that regional center staffing patterns demonstrate that direct service coordination are the highest priority."

5. Welfare and Institutions Code section 4640.7, subdivision (a) provides as follows:

“It is the intent of the Legislature that regional centers assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community.”

6. Welfare and Institutions Code section 4646, subdivision (a) provides as follows:

“It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. *It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.*” (italics added.)

7. Welfare and Institutions Code section 4647, subdivision (a) provides in part:

“Pursuant to Section 4640.7, service coordination shall include those activities necessary to implement an individual program plan, including, but not limited to . . . securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; coordination of service and support programs . . . and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.”

8. Welfare and Institutions Code section 4848, subdivision (a) provides in part:

“(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

(2) In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency which the regional center and consumer or, where appropriate, his or her parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or any part of that consumer's program plan.

(A) Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service.

(B) A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the department, pursuant to this division, and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements. The director shall adopt regulations governing the vendorization process to be utilized by the department, regional centers, vendors and the individual or agency requesting vendorization.”

9. California Code of Regulations, title 17, section 54342, subdivision (a)(40) provides in part:

“A regional center shall classify a vendor as a provider of in-home respite worker services if the vendor is an individual who: (A) Has received Cardiopulmonary Resuscitation (CPR) and First Aid training from agencies offering such training”

10. California Code of Regulations, title 17, section 56792, subdivision (e)(3)(A) provides in part:

“The vendor shall assign staff to carry out in-home respite services. (3) The respite worker shall possess the following minimum qualifications: (A) Has received Cardiopulmonary Resuscitation (CPR) and First Aid training”

11. California Code of Regulations, title 17, section 54326, subdivision (d)(1) provides as follows:

“Regional centers shall not: (1) Use purchase of service funds to purchase services for a minor child without first taking into account, when identifying the minor child's service needs, the family's responsibility for providing similar services to a minor child without disabilities. In such instances, the regional center must provide for exceptions, based on family need or hardship.”

12. California Code of Regulations, title 17, section 50510 provides in part:

“Each person with a developmental disability, as defined by this subchapter, is entitled to the same rights, protections, and responsibilities as all other persons under the laws and Constitution of the State of California, and under the laws and the Constitution of the United States. Unless otherwise restricted by law, these rights may be exercised at will by any person with a developmental disability. These rights include, but are not limited to, the following: (a) Access Rights. (1) A right to treatment and habilitation services. Treatment and habilitation services shall foster the developmental potential of the person. Such services shall protect the personal liberty of the individual and shall be provided under conditions which are the least restrictive necessary to achieve the purposes of treatment.”

Analysis

13. The foregoing authority may be summarized in the context of the present proceeding as follows:

(a) Each person with a developmental disability has a statutory right to treatment and rehabilitation services. (*Association for Retarded Citizens v. Department of Developmental Services, supra*, 38 Cal.3d at 389; §§ 4502, 4620, 4646, 4648; Cal. Code Regs., tit. 17, § 50510.)

(b) Regional centers are required to provide developmentally disabled persons with access to the facilities and services best suited to them throughout their lifetime. (*Association for Retarded Citizens v. Department of Developmental Services, supra*, 38 Cal.3d at 388; § 4620.)

(c) The rights of developmentally disabled persons under the Lanterman Act are implemented in the Individual Program Plan (IPP), which the regional centers are required to develop for each client. (*Association for Retarded Citizens v. Department of Developmental Services, supra*, 38 Cal.3d at 390; §§ 4647 and 4648.) Regional centers “shall secure services and supports that meet the needs of the” developmentally disabled person, as determined in the IPP. (§ 4848.)

(d) It is the intent of the Legislature to ensure that the provision of services to developmentally disabled persons and their families be effective in meeting the goals stated in the IPP. (§ 4646.)

(e) A fundamental responsibility of the regional centers is to provide for direct service coordination for developmentally disabled persons. “Service coordination” includes those activities necessary to implement the IPP. (§§ 4620, 4640.6, 4647.)

(f) In carrying out its responsibility to implement the IPP, a regional center may purchase services or supports for a developmentally disabled person from a third party vendor. (§ 4848.)

(g) The “services” to be provided to developmentally disabled persons include respite care services. (Cal. Code Regs., tit. 17, § 54342. subd. (a)(39) and (40).)

14. It is undisputed that claimant's family is authorized to receive 48 hours of respite care services per month and that such authorization is reflected in claimant's IPP. Claimant's family thus has a right to those services and IRC is charged with the responsibility to ensure that they receive them.

15. Though California Code of Regulations, title 17, section 56792, subdivision (e) unambiguously requires that respite care providers be CPR and First Aid certified, this provision does not address whether a regional center is obligated to fund the respite care services provided by an individual who temporarily lacks such certification. The public policy behind section 56792, subdivision (e) is as commendable as it is obvious. That policy is not, however, furthered by denying payment where, as here, the absence of certification was: (a) temporary, of short duration and has been remedied; and (b) did not result from a deliberate attempt on the part of claimant's parents to mislead IRC or to circumvent regulatory requirements. Indeed and instead, claimant's parents made a sincere and responsible effort to *comply* with those requirements.

16. To deny payment for the 18 hours of respite care services provided by McCool prior to her certification is directly contrary to the right of claimant's family to all services authorized via the IPP, including 48 monthly hours of respite care. Denial of payment is also directly contrary to IRC's explicit statutory obligation to ensure that such services are provided.

17. As noted above, California Code of Regulations, title 17, section 54326, subdivision (d)(1) provides that regional centers "shall not" purchase services for a minor "without first taking into account, *when identifying the minor child's service needs*, the family's responsibility for providing similar services to a minor child without disabilities." (italics added.) This provision is inapplicable to the present proceeding, however, since claimant's service needs have already been identified. Otherwise stated, it has already been determined that claimant and his family *do* need 48 monthly hours of respite care services. There is no basis to infer that this regulation was intended to address whether an individual who temporarily lacks the minimum qualifications may nonetheless be compensated for providing respite care services.

18. It seems clear that the issue presented in this proceeding has resulted from a lapse in communication between claimant's family, the vendor (IR), and the regional center (IRC). On the one hand, it seems clear that all three groups acted in good faith, with the goal of seeing that claimant and his family received authorized respite care services. In particular, IRC is to be commended for its attempts (as summarized above in Factual Finding paragraph 17) to identify a legally acceptable avenue by which it could authorize payment for the 18 hours in question. On the other hand, and especially in retrospect, it seems that all three of these groups may be considered to some degree responsible for the communication lapse. Claimant's parents, who first used McCool as their respite care provider on September 18, 2005, could possibly have taken steps prior to "early or mid-September" to advise IR that they were retaining a new preferred care provider. IR could have been more diligent, expeditious, and proactive in responding to the inquiries of claimant's parents and in

arranging for McCool to become CPR and First Aid certified. IRC could have done more to explicitly communicate its expectation to claimant's parents that they should contact IRC directly in the event they had any concerns with regard to IR.⁷ Finally, the breakdown in communication may in significant part be attributed to the simple fact that the agency respite system was still quite new, and thus the various possible procedural issues that might arise in the implementation of this system had not yet all been identified, much less worked out.

Significantly, however, it is IRC that is charged by statute with the responsibility not only to provide appropriate services for developmentally disabled children and their families, but also, and explicitly, to coordinate the provision of such services. Further, the statutory scheme (and in particular section 4848) seems to contemplate that vendors such as IR act as agents of the regional center with respect to the provision of services. As such, the regional center would appear to bear the ultimate legal responsibility to remedy any failures or shortcomings on the part of a vendor.

19. Regrettably, neither the statute nor the regulations addresses specifically whether a regional center is responsible to pay for services provided by an individual who for a temporary period of short duration did not meet the minimum qualifications to provide the services in question. That being the case, this matter must be resolved on the basis of more general statutory and regulatory provisions, and the public policies underlying them, discussed above.

20. Based on Factual Findings paragraphs 1 through 20, and Legal Conclusions paragraphs 1 to 19, it is concluded that, under the unique factual circumstances presented in this proceeding, the service agency Inland Regional Center is legally required to authorize its vendor Inland Respite, Inc. to compensate claimant's preferred care provider for 18 hours of respite services rendered before she became CPR and First Aid certified. Accordingly, there is hereby issued the following:

ORDER

1. Claimant's appeal regarding the Service Agency's obligation to authorize payment for 18 hours of respite care services provided to claimant's family in September 2005 is granted. Claimant is entitled to such services funded by the Service Agency.

NOTICE

This is the final administrative decision in this matter. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.

⁷ In this latter regard, the statement in claimant's IPP that "parents *may* notify IRC CSC of any changes or concerns" (*italics added*) does not constitute a clear directive to parents to contact IRC instead of IR in the event of any concerns. The belief of claimant's parents that it was appropriate for them to contact IR instead of IRC with regard to McCool's certification was reasonable.

DATED: _____

DONALD P. COLE
Administrative Law Judge
Office of Administrative Hearings